HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 665 (S/S) of 2006

Date of decision 12.09.2006

Approved for reporting.

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~~Not approved for reporting~~

Initial of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgement it is put before the Judge for Signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 665 (S/S) of 2006

Smt. Asha Rani Kannojia
W/o Sri Rajeev Bharti
R/o No. 7 Plains View, Post Office,
Mallital, Nainital ...Petitioner

Versus

1. Manager Nagar Palika, Girls Inter College, Kathgodam, District – Nainital

2. Principle Nagar Palika, Girls Inter College, Kathgodam, District – Nainital

3. State of Uttaranchal, through its Joint Director, Education, Kumaon Mandal, Nainital

4. Director of Education, State of Uttaranchal, Mayor Vihar, Sahastra Dhara Road, Dehradun ... Respondents

Mr. Shobhit Sahari, learned counsel for the petitioner.
Mr. A.K. Joshi, learned counsel for the respondent Nos. 1 and 2.
Sri N. P. Sah, learned standing counsel for the respondent Nos. 3 and 4.

Per Hon'le J.C.S. Rawat, J.

1. In this case counter and rejoinder affidavit have been exchanged. The parties are ready to argue the matter on the final hearing.

2. By means of this writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following relieves:-

> "i) To issue a writ, order or direction in the nature of mandamus directing to respondent Nos. 1 and 2 to comply with the order dated 07.04.2006 and give joining to the petitioner on the post of lecturer (Nagrik Shastra) at Nagar Palika Girls Inter College, Kathgodam.
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> ii) To issue order writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

iii) To award the cost of writ petition."

3. The petitioner was selected and appointed as lecturer (Civics) on 09.11.1992 at Sarvodeya Inter College Jayanti, Almora and the respondent No. 1-Manager Nagar Palika, Girls Inter College, Kathgodam on 13.08.2002 sent a D.O. letter to respondent No. 3 for transferring the petitioner from the Sarvodeya Inter College Jayanti, Almora to Nagar Palika Girls Inter College, Kathgodam. The petitioner was thereafter transferred on 07.04.2006 from Sarvodeya Inter College Jayanti, Almora to Nagar Palika Girls Inter College, Kathgodam. Pursuant to the said order, the petitioner was relieved from Sarvodeya Inter College Jayanti, Almora on 1st May, 2006 and when she went to the college of the respondents, she was not allowed to join there. The petitioner made the grievances to the respondent Nos. 1 and 2 and asked for the joining in pursuance of the order passed by the respondent No. 3 and 4 but she was not allowed to join. Hence, this writ petition has been filed.

4. The respondent Nos. 1 and 2 had filed their counter affidavits and they have admitted plea that the petitioner was transferred by respondent Nos. 3 and 4 vide its order dated 07.04.2006. It was further pleaded that one Smt. Champa Devi who was appointed as daily wager teacher in the College had filed a writ petition before the Allahabad High Court bearing No. 5818/1992 and the High Court directed on 24.03.1994 that Champa Devi would be allowed to work and directed to pay the salary for the further period which would be subject to the decision of the writ petition. When Champa Devi was not allowed to work in the College, then she filed a contempt petition and thereafter she was allowed to work on the post of Lecturer (civics) and as such, the post was not

vacant in the college at the time of sending the D.O. letter in the year 2002 by respondent No. 1 to the respondent Nos. 3 and 4. It was further pleaded that the respondent Nos. 3 and 4 vide its letter dated 18.01.1990 had given permission for class 11th for the subject of Hindi, English, Sanskrit, History, Civics and Sociology. It was further pleaded that the college had the qualified teacher for Hindi, History, Sociology and in the rest subjects that sanction for keeping daily wagers were accorded. Smt. Champa Devi had been working since long, as such, the post was not vacant at the time of the submitting the N.O.C. to the respondent Nos. 3 and 4.

5. I have heard Mr. Sobhit Saharia, learned counsel for the petitioner, Mr. A.K. Joshi, learned counsel for the respondent Nos. 1 and 2 and Mr. N.P. Sah, learned standing counsel for the State/ respondent Nos. 3 and 4.

6. It was contended on behalf of the learned counsel for the petitioner that the petitioner was transferred to the respondent's college by respondent Nos. 3. It was further contended that the respondent Nos. 1 and 2 had given consent to transfer the petitioner. In pursuance of the letter of respondent No. 2 dated 13.08.2002 for seeking the transfer of the petitioner from Almora College to the Kathgodam, the petitioner was transferred vide order dated 07.04.2006 to the institution of the respondent No. 2 by the respondent No. 3. It was contended by the respondent Nos. 1 and 2 that the post was not vacant at the time of submitting the aforesaid letter by respondent No. 2 as the daily wager teacher Smt Champa Devi was working against the said post. Learned for the respondent Nos. 1 and 2 contended that the Allahabad High Court in the writ petition

5815 of 1992 Champa Devi Vs. RIGS Nainital and others directed to pay the salary and to allow her to work. It is not disputed today that the post is vacant in the respondent's college. It is not disputed that Champa Devi was appointed on the daily wages basis and she had been working on the daily wages. The daily wager had no right to remain on the post and it does not confer any right to continue even after the regular appointees had been made in the institution. In the case of Champa Devi, the management has been directed to pay the salary and allow to work. But there is no direction of the High Court that the respondents will not make the regular appointment or shall not fill up the post by way of transfer to the said vacancy. The Hon'ble Apex court has held in para 34 and 36 in **Secretary, State of Karnataka & others Vs. Umadevi & others** reported in **2006 AIR SCW 1991 as under :**

> "34. ……..Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made

permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35. ……

36. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be

directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has
to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

7. It is further relevant to mention here that the respondent Nos. 1 and 2 had stated in their counter affidavits that Champa Devi had moved and application on 10.05.2006 to the Manager of the respondents' college with respect to the illegal appointment of the petitioner and it is requested to restrain such appointment on the post of Lecturer (Civics) in

the college. The application of the Champa Devi clearly reveals that she had addressed herself to be ex-adhyapika of the said college. Meaning thereby, she had not been in the employment of the respondents. It she had not been in the employment at the time of giving application how she had been claiming the right over the said post as a daily wager. Now Champa Devi is not holding any post in the said institution and she had come all of a sudden before the respondents by filing the application claiming the said post without appointment. Champa Devi was only a daily wager at the time of initial appointment and it seems that she had left the institution and thereafter she had no right again to ask that she should be retained by her without any engagement as daily wager.

8. It is evident from the record that respondent No. 2 had given his consent to respondent No. 3 to transfer the petitioner to his institution. The petitioner was transferred in pursuance of the said consent given by the respondent Nos. 1 and 2. The said consent was never revoked by respondent Nos. 1 and 2 and it was also never intimated to the respondent No. 3 that the vacancy was not vacant. The said consent had never been withdrawn. The transfer order made by the respondent No.3 to transfer the petitioner from Almora to the College of the respondent Nos. 1 and 2 was not challenged before any competent authority by respondent Nos. 1 and 2. The petitioner had been relieved from Almora to College on 01.05.2006 and she had not been given the joining and she is out of the job without her fault. The respondent Nos. 1 and 2 are responsible for not providing the joining to her. Thus the petitioner had a right to join in the said vacant post available in the college. It is not disputed to

the learned counsel for the respondent Nos. 1 and 2 that the post of Civics teacher is not vacant.

9. It was further contended on behalf of the learned counsel for the respondents that the daily wager teacher who were working in the college since 1989 had filed a writ petition before the Allahabad High Court which was registered as writ petition No. 5347/1984, Shahnaz Mirza and others Vs. State of U.P. and others in which the court has directed while disposing of the writ petition in the year 1997 with the direction to regularize the services of the petitioner as per law. It was also directed that the respondents not to terminate the services of the petitioner and shall continue till the exigency of the employment exists. It was refuted by the learned counsel for the petitioner and contended that the said petition was related to the L.T. grade teacher and had nothing to do with the post of the lecturer as highlighted in this case. What has been stated in the rejoinder affidavit have not been rebutted by the respondent Nos. 1 and 2. The petitioner had been claiming the post of lecturer (civics) and she is not claiming the joining as against the L.T. grade teacher, as such, the contention of the learned counsel for the respondents had no force.

10. The State had supported the stand of the petitioner and learned standing counsel contended that the order was in pursuance of the consent issued by the respondent Nos. 1 and 2.

11. In view of the foregoing discussion, I am of the view that petition is liable to be allowed and the petition is hereby allowed. The respondent Nos. 1 and 2 are hereby

directed to comply the order 07.04.2006 and further directed to give joining to the petitioner on the post of lecturer (civics) at Nagar Palika Girls Inter College, Kathgodam within 7 days from the date of receiving the order. The petitioner shall join at Nagar Palika Girls Inter College, Kathgodam within seven days from the date of receipt of certified copy of the order. The petitioner will be entitled to recover the cost of this petition from the respondent Nos. 1 and 2.

12. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

12th September, 2006
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